

EXHIBIT 12

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1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF NEW YORK - CIVIL TERM - PART 7
3 -----X
4 DONNA A. OLSON and ROBERT M. OLSON,
5
6 Plaintiff,
7
8 -against- Index No.
9 190328/2017
10
11 BRENNTAG NORTH AMERICA, INC.;
12 BRENNTAG SPECIALTIES, INC.,
13 Individually, and f/k/a Mineral Pigment
14 Solutions, Inc., as successor-in-interest to
15 Whittaker, Clark & Daniels, Inc.,
16 CYPRIUS AMAX MINERALS COMPANY,
17 Individually and as successor-in-interest to
18 American Talc Company, Metropolitan Talc
19 Company, Inc., Charles Mathieu, Inc., and
20 Resource Processors, Inc.;
21 IMERY'S TALC AMERICA, INC.,
22 JOHNSON & JOHNSON CONSUMER, INC.;
23 WHITTAKER, CLARK & DANIELS, INC.,
24 Individually and as successor-in-interest
25 To American Talc Company, Metropolitan Talc
Company, Inc., Charles Mathieu, Inc., and
Resource Processors, Inc.;
-----X
60 Centre Street
Jury Selection New York, New York
February 26, 2019
B E F O R E:
HONORABLE GERALD LEBOVITZ,
JUSTICE
A P P E A R A N C E S:
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Dr. Longo - Plaintiff - Direct (Mr. Block)

1 THE COURT: Good morning to everyone.
2 MR. BLOCK: Good morning.
3 MR. BROCK: Good morning.
4 THE WITNESS: Good morning, your Honor.
5 THE COURT: I understand that you would like to put
6 the TV recording into evidence? You want to do that now or
7 do you want to wait until a little bit later after the jury?
8 MR. BROCK: We'll wait until a little later. I
9 think Tom is bringing it.
10 MR. BLOCK: It's our understanding they want it to
11 be a Court Exhibit.
12 THE COURT: Yes.
13 MR. BROCK: Yes.
14 THE COURT: It was played to the court, so it
15 should be an Exhibit, you know, if they want it in evidence.
16 MR. BROCK: That's our point.
17 THE COURT: You are entitled to it.
18 THE COURT OFFICER: Ready, Judge?
19 THE COURT: Yes.
20 THE COURT OFFICER: All rise. Jury entering.
21 (Whereupon, the jurors entered the courtroom and
22 were properly seated in the jury box.)
23 THE COURT: Good morning to everyone, and please be
24 seated. You will resume whenever you like.
25 DIRECT EXAMINATION

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Dr. Longo - Plaintiff - Direct (Mr. Block)

1 BY MR. BLOCK:
2 Q Good morning, Dr. Longo.
3 A Good morning.
4 MR. BLOCK: Good morning, everybody.
5 THE JURORS: Good morning.
6 MR. BLOCK: Your Honor, plaintiff moves Exhibit 64
7 into evidence at this time.
8 MR. BROCK: No objection.
9 (Whereupon, Plaintiff's Exhibit 64 was marked in
10 evidence.)
11 Q Dr. Longo, I want to pick up where we left off
12 yesterday looking at this slide.
13 (Whereupon, a demonstrative aid was shown on the
14 screen.)
15 Q Dr. Longo, looking at the screen and at this slide,
16 these terms have been used, analytical sensitivity, detection
17 limit and I just want to make sure that we are all on the same
18 page on these terms.
19 Now, did you have to change the title here to
20 analytical sensitivity?
21 A It's analytical sensitivity, which in this case --
22 THE COURT: A little louder, please.
23 A Analytical sensitivity is the proper way to state this.
24 It's also the detection limit. It's based on finding one fiber
25 asbestos fiber in one bundle.

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1 Direct-Longo-Block
2 A. That the range of exposure on average would
3 be approximately .1 fibers per c.c. to one fiber per c.c.
4 based on our testing results.
5 Q. Is it your opinion that that would be her
6 approximate exposure to asbestos each time that the
7 Johnson's Baby Powder, Shower to Shower was applied on her
8 body?
9 MR. BROCK: Same objection.
10 A. No, you can't say each time.
11 THE COURT: There is an objection, sir.
12 THE WITNESS: I'm sorry, your Honor.
13 THE COURT: You need to pay attention for
14 that. Everything happened all at once.
15 Q. You said no, you can't say each time. So,
16 what is your opinion as to this exposure level to asbestos
17 and her 21,000 applications of Johnson's Baby Powder and
18 Shower to Shower applied to her body?
19 MR. BROCK: Same objection.
20 A. My opinion would be more like --
21 THE COURT: When there is an objection,
22 doctor, you need to wait until the Court's ruling.
23 Overruled. Now you may answer.
24 A. It would be my opinion more likely than not
25 based on our testing that when she used the product, that
26 more likely greater than 50 percent would be -- would have

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1 Direct-Longo-Block
2 enough tremolite in it.
3 THE COURT: You need to speak up.
4 A. Greater than 50 percent of the time she would
5 have been exposed at this level is my opinion.
6 Q. Okay. And is that based in part on your own
7 testing?
8 A. Yes, sir.
9 Q. And is that based in part on your review of
10 the peer-reviewed literature as to exposure of asbestos
11 from cosmetic talcum powder including powders that used
12 Italian talc?
13 A. Yes, sir.
14 Q. Is that also based upon your review of
15 Johnson & Johnson's own documents estimating exposures
16 from the use of these products?
17 A. Yes, sir.
18 Q. And is it also based upon your review of
19 historical documents showing asbestos in the source talc
20 that was used for these products?
21 A. Yes, sir.
22 Q. Thank you, Dr. Longo. I have no other
23 questions at this time.
24 A. Thank you.
25 MR. BROCK: May it please the Court?
26 THE COURT: Yes. You may inquire.

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1 Cross-Long-Brock
2 MR. BROCK: Good morning, members of the
3 jury.
4 CROSS EXAMINATION
5 BY MR. BROCK:
6 Q. I want to talk about your company. I think
7 you said yesterday that your company has tested somewhere
8 around three to 400,000 bulk samples for asbestos over the
9 last 30 years, correct?
10 A. That is correct.
11 Q. And in that entire period of time until 2017
12 or thereabouts you had never tested cosmetic talc for
13 asbestos, correct?
14 A. That is correct.
15 Q. In fact, in that entire period of time that
16 you were doing that bulk sampling, you never tested J & J
17 cosmetic talc for potential asbestos contamination,
18 correct?
19 A. That is correct.
20 Q. The only time you have tested J & J talc for
21 asbestos is in the context of being a litigation
22 consultant and expert, true?
23 A. That is true.
24 Q. Now, when it comes to the talc litigation,
25 100 percent of your work is on behalf of plaintiffs,
26 correct?

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1 Cross-Long-Brock
2 A. That is correct.
3 Q. And you were mentioning yesterday that you
4 have performed some work for the government over time. Is
5 it correct that none of your work for any of the
6 government entities had anything to do with testing talcum
7 powder?
8 A. That is correct.
9 MR. BROCK: Could I have the Elmo, please.
10 Q. All right. So, yesterday you had a slide
11 that you presented to the jury in terms of your consulting
12 work. And one of the government entities that you
13 referred to was CDC. Is it correct that your work for the
14 CDC did not involve the testing of commercial talc?
15 A. That is correct.
16 Q. Nor did it involve the testing of cosmetic
17 talc?
18 A. That is correct.
19 Q. Same is true for the National Institutes of
20 Health, the consulting work that you did for the National
21 Institutes of Health did not involve testing of cosmetic
22 talc for asbestos, true?
23 A. That is correct.
24 Q. For the City and State of New York, your work
25 did not involve the testing or evaluation of cosmetic talc
26 for asbestos, true?

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1 Cross-Long-Brock
2 A. That is correct.
3 Q. Obviously I don't think your work for NASA
4 involved testing of cosmetic talc for asbestos, true?
5 A. That is correct. That is true.
6 Q. You mentioned something about DOW. And did
7 you do work on behalf of DOW?
8 A. One of our labs did some analysis for DOW.
9 Q. Okay. That did not involve cosmetic talc,
10 true?
11 A. That is correct. It did not.
12 Q. Then the other organization that you listed
13 was the Air Force. That work did not involve the testing
14 of cosmetic talc, correct?
15 A. That is correct.
16 Q. All right. Now, you also talk about your
17 lab, and you've referenced that you know Dr. Webber,
18 correct?
19 A. I do.
20 Q. You know that he used to work for the New
21 York Department of Health, correct?
22 A. I do know that.
23 Q. All right. And the New York Department of
24 Health an Environmental Labs has an accreditation program
25 that certifies a lab for testing New York asbestos
26 samples, true?

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1 Cross-Long-Brock
2 A. That's true.
3 Q. In Georgia, the state of Georgia, is
4 it right, that there are four labs that are certified by
5 the New York State Department of Health and Environmental
6 Labs?
7 A. That is true.
8 Q. And is it also correct that your lab is not
9 accredited by the New York State Department of Health and
10 Environmental Labs?
11 A. That is correct.
12 Q. It's true, is it not, Dr. Longo, that you
13 have never visited a talc mine?
14 A. That is still true.
15 Q. You are not an expert in the techniques of
16 mine talc?
17 A. No, sir, I'm not.
18 Q. And you've never published any papers
19 relating to the possibility of asbestos contamination of
20 talc, correct?
21 A. No, I haven't.
22 Q. You've talked about the technique that you've
23 used for testing cosmetic talc. Your techniques for
24 testing cosmetic talc have never been published in the
25 peer-reviewed literature, have they?
26 A. I don't think that's quite correct.

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1 Cross-Long-Brock
2 Q. Have you published your technique the way you
3 do it in litigation in the peer-reviewed literature?
4 A. It's not my technique. The Blount PLM has
5 been published and we used the protocols. It's not my
6 method.
7 MR. BROCK: Object and move to strike, your
8 Honor. I think it was an easy yes or no answer to
9 that question.
10 THE COURT: He was able to answer that yes or
11 no, at least as to that one.
12 Q. All right. Let's keep going. You know that
13 there are components of the tests that you have conducted
14 that are not consist with the Blount Method that is
15 reported in the peer-reviewed literature, correct?
16 A. I don't believe that's correct.
17 Q. You spin (gesturing) the sample in a
18 different rate, do you not?
19 A. Not for our Blount PLM we don't. We follow
20 the method exactly.
21 Q. Do you use a different weight for the -- the
22 material that you're using in the test?
23 A. No. When we did the Blount PLM Method for
24 these analysis, we followed her protocol. We used the
25 same heavy liquid density.
26 Q. For your test of 30 samples that you received

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1 Cross-Long-Brock
2 from eBay and collectors and from plaintiffs' lawyers who
3 had clients, when you did that test, you did the test with
4 TEM, did you not?
5 A. Yes, sir.
6 Q. And Blount did her test with PLM, correct?
7 A. That is correct.
8 Q. Have you published your technique of using
9 TEM with the concentration method in the peer-reviewed
10 literature?
11 A. We have not published on cosmetic talcs yet.
12 Q. You haven't published at all, correct?
13 A. Not yet; no, sir.
14 Q. It's correct that you have not published the
15 technique of using TEM with the Concentration Method,
16 that's true, isn't it?
17 A. It's already been published.
18 Q. No. I'm asking, sir --
19 THE COURT: You have to answer the question,
20 sir, yes, no or I don't know. Those are your only
21 options. Have you published it?
22 THE WITNESS: I have not published it.
23 THE COURT: Thank you.
24 THE WITNESS: Thank you, your Honor.
25 Q. Thank you. Now, you mentioned yesterday that
26 you have been working as a testifying expert in litigation

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1 Cross-Long-Brock
2 for many years, correct?
3 A. That is correct.
4 Q. In fact, you've been testifying as an expert
5 since around 1990, correct?
6 A. '90, '91, yes, sir.
7 Q. Okay. Your business, the one that you run
8 today MAS, was opened in 1988, correct?
9 A. Yes, sir.
10 Q. And soon after opening your business, you
11 started advertising your services to be involved in
12 litigation, correct?
13 A. That's not correct.
14 MR. BROCK: Let's look at DD I think it's
15 dash one or dash two. Thirty-four, yes.
16 Q. This was an advertisement for your services
17 that you put up in -- put out in 1989, correct?
18 A. That's correct.
19 Q. Shortly after starting your business MAS,
20 correct?
21 A. A year later, yes, sir.
22 Q. And that's you, a younger version of you
23 standing in a courtroom, isn't it?
24 A. Yes, sir that's a much younger version of me.
25 Q. And this is one of your colleagues. Is this
26 Dr. Yamete --

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1 Cross-Long-Brock
2 A. Dr. Yamete, yes.
3 Q. -- standing there with you, correct?
4 A. Yes.
5 Q. And you're standing in a courtroom, correct?
6 A. That's correct.
7 Q. You showed the jury yesterday your nice
8 microscopes and the equipment that you have. You didn't
9 take a picture of yourself in a white coat standing at the
10 TEM, did you?
11 A. No, sir.
12 Q. And this picture, did you put in one of the
13 magazines, you're standing in a courtroom with your
14 colleague there, Dr. Yamete, at the time, correct?
15 A. That is correct.
16 Q. And you took out this ad in a trade magazine
17 for a group called The National Asbestos Council, correct?
18 A. Yes, sir.
19 Q. And since this time, working as a consultant
20 and an expert in asbestos litigation, has been very
21 lucrative for you, hasn't it?
22 A. It has allowed our lab to survive, yes, sir.
23 Q. Well, you've survived to the tune, I think
24 you've described it, as a million dollars a year for
25 30 years, correct?
26 A. That's what we billed plaintiff's attorneys,

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1 Cross-Long-Brock
2 yes, sir.
3 Q. And that's what you call surviving?
4 A. Yes, sir.
5 Q. Okay. Now, this period of time during which
6 you've been serving as a litigation expert and consultant
7 in lawsuits, I think you just said this \$30 million that
8 we're talking about is what you have billed to lawyers who
9 are representing folks that are filing lawsuits, correct?
10 A. Yes, sir.
11 Q. So, \$30 million on behalf of plaintiffs?
12 A. That's correct.
13 Q. And let's talk about sort of what you do in
14 those cases. Since that ad ran back in 1989, you have
15 said that you have testified under oath somewhere around
16 2,500 to 3,000 times, correct?
17 A. Yes, sir. That would be correct.
18 Q. And that means that you're giving somewhere
19 around a hundred depositions or making trial appearances a
20 year, is that correct?
21 A. Between 50 and a hundred, yes, sir.
22 Q. Well, if it's 3,000 and you've been doing it
23 for 30 years, what does that come to?
24 A. Well, I will tell you.
25 Q. All right.
26 THE COURT: The record should reflect the

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1 Cross-Long-Brock
2 witness is looking at his cell phone, probably using
3 a calculator.
4 A. Somewhere between one and two.
5 Q. Between one and 200?
6 A. One or two depositions a week.
7 Q. Okay. I was asking a different question, but
8 thank you for that.
9 A. I'm sorry.
10 Q. If you have given 3,000 depositions and court
11 appearances where you've testified under oath over a
12 period of 30 years, that would be about a hundred a year,
13 correct?
14 A. Yes, sir.
15 Q. All right. And if we think about this as
16 working around 300 days a year, you would be giving
17 testimony under oath every third business day, correct?
18 A. If it's that amount, yes.
19 Q. Okay. And that works out to about what you
20 described. You give testimony under oath one to two times
21 a week?
22 A. Yes, sir.
23 Q. Now, you've also described that you've been
24 designated as an expert several thousand times by
25 plaintiffs' lawyers suing in litigation, correct?
26 A. That is correct.

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1 Cross-Longo-Brock
2 Page 36. I'm sorry.
3 Q. All right. This is a section here on
4 cleavage fragments. Do you see that?
5 A. Yes, sir.
6 Q. All right. And it says, "Minerals with
7 perfect cleavage can produce perfect regular fragments."
8 Do you see that?
9 A. Yes.
10 Q. "Amphibole with prismatic cleavage will
11 produce prismatic fragments. These fragments can be
12 elongated and on superficial observation may resemble
13 fibers." Do you see that?
14 A. I do.
15 Q. "However, because they did not grow as fiber,
16 they cannot have the characteristics of fibers." Do you
17 see that?
18 A. I see that.
19 MR. BROCK: Go to the next imagine,
20 consequently. The top right here. Cleavage
21 fragments. Consequently cleavage fragments.
22 Q. "Cleavage fragments cannot be called fibers."
23 Do you see that?
24 A. I see it states that, yes.
25 Q. That's from the Campbell paper that you
26 relied on for your distribution chart, correct?

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1 Cross-Longo-Brock
2 A. Yes, sir, for their data on that I did.
3 Q. When your firm MAS is analyzing talc samples,
4 if one of your analysts who is conducting the test sees a
5 non-asbestiform amphibole cleavage fragment, it has
6 substantially parallel sides, an aspect ratio of five to
7 one or greater and is at least 5.5 micrometers long the
8 analyst will count that as an asbestos structure, true?
9 A. Meets that definition, that is true.
10 Q. If he finds those things, he will count it as
11 an asbestos structure, correct?
12 A. As a regulated asbestos in that population,
13 yes.
14 Q. But we know from what we see from the
15 regulations that we have looked at and the materials that
16 we have seen, that it's not necessarily the case that the
17 particle that's being called asbestos grew in the
18 asbestiform habit, true?
19 A. No, I disagree with that.
20 Q. I want to turn to some of the testing that
21 you have conducted in the case now.
22 A. Yes, sir.
23 Q. First of all, over the last couple of years
24 your lab has been involved in analyzing samples of Johnson
25 & Johnson talcum powder products. We'll talk about some
26 of those. That's one of the things you've been doing, is

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1 Cross-Longo-Brock
2 that correct, sir?
3 A. That is correct.
4 Q. You believe MAS has the ability to analyze
5 talcum powder products and reach certain conclusions about
6 the tests that they would conduct, correct?
7 A. That is correct.
8 Q. Now, in this case you have not tested or
9 analyzed any talcum powder products that Ms. Olson used,
10 correct?
11 A. Personally used? I'm sorry. Personally
12 used?
13 Q. Yes.
14 A. Yes, sir, I have.
15 Q. You have not tested any of Ms. Olson's
16 bottles of talcum powder, correct?
17 A. That is correct.
18 Q. You mentioned earlier that you reviewed her
19 deposition?
20 A. Yes.
21 Q. And you know that she had bottles of talcum
22 powder in her possession at the -- during the pendency of
23 this lawsuit, correct?
24 A. That is correct.
25 Q. And you have not tested those bottles and do
26 not come to court today to say that any of the bottles

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1 Cross-Longo-Brock
2 that she had in her possession contained asbestos, true?
3 A. We haven't tested those bottles, no.
4 Q. And you're aware that Ms. Olson says that she
5 saved at least three bottles of J & J talcum powder?
6 A. Yes. The latter years, but she did say that
7 in her deposition.
8 Q. Is the answer to my question yes?
9 A. The answer to your question is yes.
10 Q. Now, you also know that your firm, your
11 organization has the ability to process tissue and do a
12 tissue digestion to see if there is an asbestos burden in
13 the tissue of a patient, correct, or a plaintiff?
14 A. If there is appropriate tissue to do the
15 analysis, that is correct.
16 Q. And you have people within your organization
17 who specialize in that particular field, correct?
18 A. That is correct.
19 Q. All right. I think Dr. Rigler you guys hold
20 out as having a strong background in doing reviews of
21 tissue digestions, correct?
22 A. That's correct.
23 Q. All right. And you have not done a tissue
24 digestion to see if there is an asbestos fiber burden with
25 regard to Ms. Olson, is that correct?
26 A. That is correct, we have not done that